



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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UNITED STEELWORKERS OF AMERICA  
OF AMERICA, LOCAL 8938

Complainant

v.

CITY OF MANCHESTER WATER WORKS

Respondent

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CASE NO: M-0545:11

DECISION NO: 92-151

### APPEARANCES

Presenting United Steelworkers, Local 8938:

Glenn R. Milner, Esq., Counsel

Representing City of Manchester:

David Hodgen, Chief Negotiator

Also appearing:

Thomas Bowen, Manchester Water Works  
Frank McLean, Local 8938  
Ronald M. Soua, Local 8938  
Michael D. Roche, Local 8938

### BACKGROUND

On April 3, 1992 the United Steelworkers of America, Local 8938 (Union) filed unfair labor practice charges against the City of Manchester (City) alleging a failure to bargain in good faith and violations of RSA 273-A:5 I (a) (e) and (g). The City filed its answer on April 20, 1992 and the matter was heard by the PELRB on June 11, 1992. That hearing resulted in Decision No. 92-108 (orally on June 11, 1992) which directed the parties' to return to bargaining as required by RSA 273-A:5 I (e). The Union filed a Motion for Reconsideration on June 15, 1992 and the City objected to reconsideration by filing of June 26, 1992. The Motion for Reconsideration was granted on July 14, 1992 (Decision No. 92-123) and the matter was heard by the PELRB on September 17, 1992.

FINDINGS OF FACT

1. The City of Manchester, by and for its Water Works Department, is a public employer of employees in that department as defined by RSA 273-A:1 X.
2. United Steelworkers of America, Local 8938 is the duly certified bargaining agent of employees employed by the City of Manchester Water Works Department.
3. For all times pertinent for these proceedings the parties were operating under a collective bargaining agreement (CBA) or an extension thereof for the period January 1, 1989 through December 31, 1991 with wages, overtime, sick leave and medical insurance for retirees reopeners for calendar year 1991.
4. During the negotiations for a successor CBA, the parties engaged in fact finding. The fact finding hearing was held on August 2, 1991; the fact finder's report was issued on November 11, 1991.
5. The union membership unanimously approved the fact finder's report, but, on December 4, 1991, the report was rejected by the Water Commissioners.
6. On December 11, 1991 press accounts in the "Union Leader" attributed statements to Water Commissioner Thomas Tessier that the Union would have been better off to have accepted a three year pact in 1989 rather than opting for reopeners for 1991.
7. On December 17, 1991, the Manchester Board of Mayor and Alderman, the ultimate "employer" under RSA 273-A:1 X, unanimously rejected the fact finding report without comment or reasons.
8. Had the Union accepted the three year pact proposed by the City in 1989, it would have received 4 1/2% for 1989, 6% for 1990 and 6% for 1991. Non-affiliated employees received a 6% raise in 1991 but this was approved as a package by the Aldermen on December 18, 1989.
9. Mayor Raymond Wieczorek has not approved any raises for employees for 1991 unless the City was obligated by earlier negotiations or contract to grant such raise.
10. While the Manchester Water Works sets rates (subject to PUC approval), collects fees and presently

may have a capital surplus, the terms of any labor agreement negotiated by it are subject to approval and funding by the Board of Mayor and Aldermen which is the "board of the public employer" as contemplated in RSA 273-A:1 II.

DECISION AND ORDER

The Union has alleged that the City's conduct in these negotiations is violative of RSA 273-A:5 I (a) [restraining or coercing employees], (e) [refusal to negotiate], and (g) [failure to follow requirements of Chapter 273-A]. We find none of these provisions to have been violated.

The evidence before us indicates that the City adhered to the provisions of RSA 273-A:12 pertaining to the resolution of disputes. It engaged in good faith in the fact finding process; it is not violative of RSA 273-A:5 or 12 to have rejected the fact finder's report without giving the reasons for doing so.

As the "board of the public employer," it is the prerogative of the Board of Mayor and Aldermen to determine the contents of the parties' collective bargaining agreement from the management perspective. No matter how strongly the Union believes it is entitled to portions of the Water Works Departments' financial surplus as a means to settle the contract dispute, the board of the public employer has the final authority and responsibility for the manner in which it decides to spend yet-to-be appropriated funds for contract settlement. RSA 273-A:3.

Lastly the comments attributed to Commissioner Tessier were made/reported approximately a week after the Water Commissioners voted to reject the fact finding report. Thus, his comments could have had no impact on the vote of his fellow commissioners and there was no evidence presented that his comments had any influence on the members of the Board of Mayor and Aldermen.

Accordingly, the charge of unfair labor practice is DISMISSED and the parties are directed to return to bargaining forthwith as is required by RSA 273-A:3.

So ordered.

Signed this 27th day of October, 1992.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Seymour Osman and Arthur Blanchette present and voting.